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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,714	11/17/2000	Joseph H. Sklar	INNO-31	6629

7590

03/25/2004

Pandiscio & Pandiscio
470 Totten Pond Road
Waltham, MA 02451-1914

EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
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3738

19

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/715,714

Applicant(s)

HAYS ET AL.

Examiner

Bruce E Snow

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-20 and 26-34 is/are allowed.
- 6) ☒ Claim(s) 1, 5-7 and 11-14 is/are rejected.
- 7) ☒ Claim(s) 2-4, 8-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims 21-25 drawn to an invention nonelected without traverse in Paper No. 8. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Priority

Applicant has amended the priority of this application. It is noted that the claimed subject matter is not supported totally in the previous applications; the filing date of all claims are 11/17/00.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-7, 11-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Riesser et al (6,387,129) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Riesser et al (6,387,129) in view of Ross et al (5,470,334).

Riesser et al teaches a fixation screw for fastening a graft ligament within a bone tunnel having a proximal end canted relative a longitudinal axis. See reasoning for canted end in column 4, lines 7-11. Said proximal end defines a generally planar end surface. Inherently, the planar distal end surface can be divided into a first portion and a second portion to define a linear axis therebetween.

In the alternative (Claims are rejected under 35 U.S.C. 103(a) as being unpatentable over Riesser et al (6,387,129) in view of Ross et al (5,470,334)).

Riesser et al teaches a fixation screw for fastening a graft ligament within a bone tunnel having a proximal end canted relative a longitudinal axis. See reasoning for canted end in column 4, lines 7-11. Said proximal end defines a generally planar end surface having a hexagonal socket. However, Riesser et al is silent regarding end surface having a "linear axis therebetween" defined by first and second portions.

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Ross et al teaches a fixation screw wherein it is known in the art that most screws have either a transverse slot or hexagonal socket formed therein to engage, respectively, a similarly configured, single blade or hexagonal driver for turning the screw into a bone; see column 1, lines 35 et seq. It would have been obvious to one having ordinary skill in the art to have substituted the well known transverse slot of Ross et al for the hexagonal socket of Riesser et al as known mechanical substitutes also, wherein the transverse slot is easier and cheaper to manufacture. The combination fulfills all claim language.

Additionally, applicant specification lacks any criticality for the "*and the planar end surface extends from.. central axis*" (which is interpreted as the transverse slot) and gives no advantage over the hexagonal socket of Riesser et al and is considered merely a obvious matter of design choice known in the art.

Allowable Subject Matter

Claims 2-4, 8-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 15-20 and 26-34 are allowed.

Response to Arguments

Applicant's arguments filed 2/9/04 have been fully considered but they are not persuasive.

Regarding the rejections in view of Rieser et al; the new limitation added to claims 1, 7, and 13, "*the planar end surface is formed so that said outer periphery of*

said shank is concentric with a maximum outer diameter of said screw threads" fails to define over the rejections. The Examiner notes that the claims only require the "planar end surface" to be a "**generally** planar end surface". Now referring to figures 3 and 4 of Rieser et al, the end surface includes a larger planar surface and a smaller surface which as shown appears to be a portion of a conical surface; referring to figure 3, the reference numeral 26 shows the intersection of the two surfaces. It is the Examiner's position that the two surface together form the "generally planar end surface"; therefore, the intersection of the two surfaces is clearly not the outer periphery of the shank. Inherently the outer periphery of the shank at the generally planar end surface is concentric with a maximum outer diameter of the screw threads.

Regarding the rejection of claims 15 and 19-20 under 35 U.S.C. 103(a) as being unpatentable over Beck, Jr. et al (5,632,748) in view of Mahony, III (5,282,802) applicant's arguments were persuasive.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (703) 308-3255. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703)308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bes



BRUCE SNOW
PRIMARY EXAMINER